



ENERGEN RESOURCES CORPORATION

188 IBLA 374

Decided September 28, 2016



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Office of Hearings and Appeals
Interior Board of Land Appeals
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ENERGEN RESOURCES CORPORATION

IBLA 2014-165

Decided September 28, 2016

Appeal from a decommissioning order for an Outer Continental Shelf oil and gas lease. GE 1078A.

Affirmed.

1. Outer Continental Shelf Lands Act: Oil and Gas Leases

Where at least one assignee of an Outer Continental Shelf Lands Act lease has failed to perform its decommissioning obligations, the Bureau of Safety and Environmental Enforcement (BSEE) properly holds former lessees and assignors jointly and severally liable. BSEE is not required to proceed with ordering decommissioning in reverse chronological order, waiting for each of the most recent interest holders to default before taking action against an earlier interest holder.

2. Federal Employees and Officers: Authority to Bind Government

At the U.S. Department of the Interior, only the Secretary of the Interior, the Assistant Secretary with delegated rulemaking authority, the Office of Hearings and Appeals, and the Board have the authority to bind the Department to a regulatory interpretation.

3. Administrative Authority: Laches

The doctrine of laches cannot be used to prevent the Department from enforcing a public right or protecting a public interest.

APPEARANCES: Philip G. Eisenberg, Esq., Houston, Texas, and C. Davin Boldissar, Esq., New Orleans, Louisiana, for Energen Resources Corp.; Eric Andreas, Esq. and Dan Pulver, Esq., U.S. Department of the Interior, Office of the Solicitor, Washington, D.C., for the Bureau of Safety and Environmental Enforcement.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

Energen Resources Corporation (Energen), a former Federal offshore oil and gas lessee, appealed a decommissioning order, dated January 31, 2014, issued by the Bureau of Safety and Environmental Enforcement (BSEE), concerning Outer Continental Shelf (OCS) Lease OCS-G 10226, Brazos Block 544.

Summary

Energen asserts that BSEE erred by demanding decommissioning from Energen instead of first demanding such performance from other former lessees.

Under Departmental regulations and Board precedent, former lessees of an OCS lease are jointly and severally liable for decommissioning obligations related to the lease. Where at least one lessee has failed to carry out decommissioning, BSEE properly orders a former lessee to perform the decommissioning. BSEE is not required to proceed in reverse chronological order against the most recent lessees first.

An appellant from BSEE's decommissioning orders has the burden to show error in those orders. Energen has shown no error in BSEE's approach and we, therefore, affirm the decision.

Factual Background

In 1988, Total Minatome Corporation (TMC) and another corporation became the original lessees on the Lease, with each party holding a 50% interest.¹ In 1991, the lessees drilled Well A001.² TMC held its interest in the Lease until February 1, 1992, which was the effective date of the transfer of its interests to

¹ Administrative Record (AR), Document (Doc.) 2 at 1; Answer at 1.

² AR, Doc. 9 at 2; Answer at 1-2.

Transco Exploration and Production Company (Transco).³ In 1998, Energen purchased TMC.⁴

Effective in 1997, ATP Oil & Gas Corporation (ATP) held 100% interest in the Lease. On June 20, 2013, the U.S. Bankruptcy Court for the Southern District of Texas authorized ATP to abandon and relinquish its obligations under the Lease.⁵ On July 8, 2013, ATP notified BSEE that it did not intend to perform any required maintenance or decommissioning activities under the Lease.⁶

In a December 3, 2013, order, BSEE stated that Energen is responsible for Lease decommissioning activities, and required Energen to decommission all wells, pipelines, platforms, and other facilities on the Lease by November 21, 2014, and specifically to permanently abandon Well A001. In its December 26, 2013, order, BSEE reaffirmed Energen's liability. In a January 31, 2014, order, BSEE partially rescinded the previous two orders and concluded that Energen was jointly and severally responsible only for Well A001, but not for other liabilities on the Lease. Energen appealed the January 31, 2014, order to the extent it did not rescind the December 3, 2013, and December 26, 2013, orders in their totality, and retained BSEE's requirement that Energen decommission Well A001.

On October 7, 2014, Energen filed a Statement of Reasons (SOR) and moved for a hearing on questions of fact. BSEE filed an Answer and opposition to the motion for a hearing. In an Order dated March 30, 2015, the Board denied the motion for a hearing. We found Energen had not provided a persuasive argument for a fact-finding hearing, and that the issues it raised would be best addressed by documentary evidence accompanied by briefing, rather than by oral testimony.

On appeal, Energen suggests it may not be a corporate successor-in-interest to TMC, and then argues BSEE was premature in seeking decommissioning from Energen before requiring it of others. Energen also argues other lessees increased the decommissioning costs. In addition, Energen asserts estoppel, contending that BSEE erred in requiring decommissioning of Energen when such order was contrary to a previous Department official's policy and prior agency enforcement practice. And finally, BSEE contends that the Department is equitably barred from enforcement based on its delay in seeking decommissioning.

³ Answer at 1 (citing to various documents in the AR); see Statement of Reasons, Exhibit (Ex.) E (assignment from TMC to Transco).

⁴ AR, Doc. 2; Answer at 2.

⁵ *Id.*

⁶ AR, Doc. 6 at 1; Answer at 2.

*Energen Has Not Shown That BSEE Erred In Finding It to Be
a Corporate Successor-In-Interest for TMC's Liabilities*

In its SOR, Energen suggested that it “may” not be a corporate successor-in-interest to TMC as to its liabilities, including decommissioning, and

stated that its “[i]nvestigation continues as to the succession in interest.”⁷ More than 2 years has passed since that statement, yet Energen has not provided the Board additional documentation regarding the issue. In contrast, BSEE points out that Energen has admitted, both in correspondence and in a U.S. District Court, that it is a corporate successor-in-interest to TMC.⁸ We find Energen has not shown error in BSEE’s determination that Energen is a corporate successor-in-interest to TMC’s liabilities, including decommissioning.

*BSEE’s Decommissioning Order to Energen
Was Not Premature*

[1] Energen summarily asserts that BSEE erred by demanding decommissioning from Energen instead of first demanding such performance from ATP’s immediate predecessors on the Lease.⁹ In recent decisions, the Board rejected this same argument,¹⁰ and we adopt our reasoning and conclusions from those cases here. To summarize, we rejected arguments by former lessees and assignors that under the assignment regulations, an assignor can be held responsible for decommissioning only if all assignees subsequent to the assignor fail to perform their accrued decommissioning obligations.¹¹ We found that under the regulatory language, former and current lessees are jointly and severally liable and thus, if at least one assignee fails to perform its obligations under the lease, BSEE may issue decommissioning orders to other former lessees and assignors.¹² In those cases, which concerned another lease where ATP failed to perform its decommissioning obligations, we held that BSEE properly issued decommissioning orders to Anadarko

⁷ SOR at 8.

⁸ Answer at 6-7 (citing Answer, Ex. 1 and *Chevron U.S.A., Inc. v. Energen*, Civ. Action No. 08-76-JJB, 2009 U.S. Dist. LEXIS 67914 n.5, 2009 WL 2390311 (M.D. La. Aug. 4, 2009)).

⁹ SOR at 6-7.

¹⁰ *Devon Energy Production Co., LP*, 188 IBLA 268, 271-72 (2016); *Anadarko Petroleum Corp.*, 187 IBLA 77, 91-92 (2016).

¹¹ *Devon*, 188 IBLA at 271-72; *Anadarko*, 187 IBLA at 91.

¹² *Devon*, 188 IBLA at 271; *Anadarko*, 187 IBLA at 92.

and other former lessees.¹³ Here too, at least one assignee (ATP) has failed to carry out its decommissioning obligations, and, therefore, BSEE did not prematurely issue decommissioning orders to Energen as a former lessee.

Energen also summarily asserts BSEE erred by failing to investigate whether other parties as predecessors-in-title have performed decommissioning work on Well A001 or are better positioned to do so.¹⁴ In *EP Energy E&P Co., L.P.*, appellant argued that others were better positioned to fulfill decommissioning obligations because its “transfer of operating rights somehow divests the lessee of the right to decommission its offshore lease, or, ultimately bars the regulatory provision of joint and several responsibility for decommissioning the lease from being imposed on the lessee and operating rights owners alike.”¹⁵ The Board held “[t]he former lessee’s obligation to decommission is not diminished by its transfer of all operating rights or even cessation of all oil and gas leasing activity in the [OCS].”¹⁶ Whether others have begun decommissioning or are better positioned to undertake the obligation does not diminish Energen’s joint and several responsibility to decommission. “There are no regulatory exceptions for such circumstances barring BSEE’s enforcement.”¹⁷ Energen provides no legal support for its assertion. Contrary to Energen’s assertion, BSEE has no obligation to pursue an investigation as to which entity is better positioned to fulfill decommissioning, before issuing a decommissioning order to a former lessee, such as Energen. Energen has not demonstrated error in BSEE’s order.

In a related argument, Energen contends BSEE acted prematurely by ordering Energen to carry out decommissioning instead of first determining whether an escrow account BSEE and the Bureau of Ocean Energy Management received from ATP will provide funds to perform the decommissioning, or whether the decommissioning should be performed under the escrow or Decommissioning Trust Agreement.¹⁸ Energen also contends BSEE should be required to use ATP’s escrow account before looking to other parties such as Energen.¹⁹ Alternatively, it contends that BSEE’s waiver and release of ATP should be considered a waiver and release of Energen as well.²⁰

¹³ *Devon*, 188 IBLA at 271-72; *Anadarko*, 187 IBLA at 91-93.

¹⁴ SOR at 7.

¹⁵ 188 IBLA 156, 165 (2016).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ SOR at 5.

¹⁹ *Id.*

²⁰ *Id.* at 5-6

Energen provides no legal authority or argument supporting these summary assertions, and we find none. Before us is the issue of whether Energen is jointly and severally liable for decommissioning. Again, we hold that, under Departmental regulations, an assignor / former lessee is jointly and severally liable for its accrued obligations under an OCSLA lease.²¹

*Energen Has Not Proven Subsequent Parties' Work at Well A001
Increased Energen's Decommissioning Obligations for that Well*

In the alternative, Energen argues that to the extent it is responsible for decommissioning Well A001, its responsibility only includes decommissioning obligations that had accrued as of February 1, 1992 (the effective date when TMC assigned its interests to Transco).²² It is undisputed that Well A001 was first drilled in 1991, while TMC held an interest in the Lease. As noted, having acquired TMC, Energen is its corporate successor-in-interest for purposes of TMC's decommissioning liability.

Energen states that successors-in-title subsequent to TMC (now Energen) performed "substantial work" on Well A001, and "[s]uch work *may* include recompletion, drilling, deepening, and/or re-entering Well A001."²³ Energy also states "that such work *may* have caused additional decommissioning responsibilities to accrue after February 1, 1992 for which Energen is not responsible."²⁴

As we explained in *Anadarko*, pursuant to the standard terms of the lease, lessees of an OCSLA lease agree to be subject to future OCSLA regulations, to the extent they concern decommissioning obligations and ensuring that assignors retain responsibility for decommissioning obligations despite an assignment.²⁵ That standard term is part of the Lease at issue in the present case as well.²⁶ The regulation in effect when BSEE issued the order -- 30 C.F.R. § 250.1702 -- titled, "When do I accrue decommissioning obligations?," provides:

²¹ 30 C.F.R. §§ 556.710, 556.604(d).

²² SOR at 7-8.

²³ *Id.* at 8 (emphasis added).

²⁴ *Id.* (emphasis added).

²⁵ *Anadarko*, 187 IBLA at 89-90, 94.

²⁶ See Lease, filed by TMC with U.S. Department of Interior's Minerals Management Service (MMS), Sept. 14, 1988, at ¶ 1 (included in AR, Doc. 1).

You accrue decommissioning obligations when you do any of the following:

- (a) Drill a well;
- (b) Install a platform, pipeline, or other facility;
- (c) Create an obstruction to other users of the OCS;
- (d) Are or become a lessee or the owner of operating rights of a lease on which there is a well that has not been permanently plugged according to this subpart, a platform, a lease term pipeline, or other facility, or an obstruction;
- (e) Are or become the holder of a pipeline right-of-way on which there is a pipeline, platform, or other facility, or an obstruction; or
- (f) Re-enter a well that was previously plugged according to this subpart.^[27]

The regulations also provide that each current and prior record title owner is jointly and severally liable for obligations that accrued while it held a record interest in the lease.²⁸ And BOEM's regulations clarify that an assignor remains liable for all obligations that accrued in connection with a lease during the period in which that assignor owned record title interest up to the date BOEM approved the assignment.²⁹ After assignment, BOEM or BSEE may require the assignor to perform decommissioning obligations if a subsequent assignee fails to do so "to the extent the obligation accrued before approval of [the] assignment."³⁰

BSEE concedes that Energen's liability might be limited, as Energen claims: "BSEE agrees that Energen is responsible for only the decommissioning obligations that it accrued under the lease pursuant to 30 C.F.R. § 556.62(e). If subsequent work was done on Well A001 that increased decommissioning costs beyond what Energen has accrued, Energen may not be responsible for that portion of the decommissioning work."³¹

We have reviewed the documents Energen cited in its SOR with respect to accrued obligations for Well A001.³² The limited detail in the documents suggests that parties subsequent to TMC (now Energen) might have accrued joint

²⁷ 30 C.F.R. § 250.1702.

²⁸ 30 C.F.R. §§ 556.604(d), 556.710.

²⁹ 30 C.F.R. § 556.710.

³⁰ *Id.*

³¹ Answer at 6.

³² See SOR, Ex. G (cited by SOR at 8).

and several liability for Well A001, but does not indicate whether the subsequent parties performed additional work on Well A001 after TMC assigned its record title interest in the Lease.³³ Since Energen does not provide evidence to support its assertion that other parties performed new work on Well A001, which increased decommissioning costs beyond what TMC / Energen had accrued, it has not preponderated in showing error in BSEE's decommissioning order holding Energen responsible for decommissioning Well A001.

*Past Policy Pronouncements in a Letter and Memorandum
Do Not Relieve Energen from Liability*

Energen states that documents (a letter and a memorandum) dated June 1988 and November 1989, respectively, indicate it was the policy position of BSEE's predecessor, MMS, that once MMS unconditionally approves an assignment, then the assignor is relieved from liability.³⁴ MMS approved TMC's (now Energen) assignment of its interests on October 26, 1992 (effective Feb. 1, 1992).³⁵ Energen argues it was relieved of responsibility on that date.

[2] BSEE points out that, at the Department of the Interior, only the Secretary of the Interior, the proper Assistant Secretary with delegated rulemaking authority, the Office of Hearings and Appeals (OHA), and the Board have authority to bind the Department to a regulatory interpretation,³⁶ and asserts the author of the documents cited by Energen did not have the authority to bind the Department. We find no evidence in the record indicating the MMS official in question was accorded such authority, and, therefore, his regulatory interpretation and past practices with other lessees implementing that interpretation do not serve to bind the Department with respect to TMC's liability.³⁷

³³ See 30 C.F.R. § 250.1702.

³⁴ SOR at 9; see Answer, Ex. 2.

³⁵ SOR, Ex. E.

³⁶ Answer at 8 (citing *Statoil Gulf of Mexico, LLC*, 42 OHA 261, 304, 306 (2011) (the Director of OHA held that decisions from a MMS Regional Supervisor and Regional Director were not binding on the Department); *Devon Energy Corp. v. Kempthorne*, 551 F.3d 1030, 1040 (D.C. Cir. 2008) (holding that memoranda from the MMS Deputy Director were not final, binding agency determinations of the rule at issue)); see also *Island Operating Co., Inc.*, 186 IBLA 199, 221 n.22 (2015) (citing *Devon Energy Corp.*, 551 F.3d at 1040, we held that public statements made by some BSEE officials did not bind the Department).

³⁷ *Statoil Gulf of Mexico, LLC*, 42 OHA at 306; *Devon Energy Corp.*, 551 F.3d at 1041.

BSEE's Delay Does Not Preclude Enforcement

Finally, Energen argues that “any delay” by BSEE in enforcing decommissioning obligations should equitably estop BSEE’s enforcement against Energen or limit its responsibility.³⁸ We disagree.

[3] The doctrine of laches, generally, is an equitable doctrine by which relief is denied to a claimant who has unreasonably delayed asserting or been negligent in asserting the claim, when that delay or negligence prejudices the party against whom relief is sought.³⁹ However, the doctrine of laches cannot be used to prevent the Department from enforcing a public right or protecting a public interest.⁴⁰ In addition, we note Energen’s own words are speculative as to prejudice from the delay: “Energen *may* have detrimentally relied on BSEE’s conduct.”⁴¹

Conclusion

As we discussed herein, Energen has not carried its burden to show error in BSEE’s January 31, 2014, order.⁴² Energen has not shown that BSEE erred in finding it to be a corporate successor-in-interest to TMC’s liabilities. The regulations and our precedent clearly provide for joint and several liability of former lessees, such as Energen, so Energen has not succeeded in arguing that BSEE’s orders to Energen were premature. Energen has also not shown that subsequent parties’ work at Well A001 have increased Energen’s decommissioning liabilities. Moreover, Energen has not shown that an MMS letter and memorandum signed prior to the assignment of interests (in 1992) were issued by an official with authority to bind the Department to a regulatory interpretation. Finally, BSEE’s delay in enforcement of decommissioning obligations does not preclude enforcement.

³⁸ SOR at 9-11.

³⁹ Black’s Law Dictionary (7th ed. 1999) (definition of “laches”); *see W&T Offshore, Inc.*, 148 IBLA 323, 347 (1999).

⁴⁰ 43 C.F.R. § 1810.3(a) (“The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by . . . laches, neglect of duty, failure to act, or delays in the performance of their [officers’ or agents’] duties.”); *Santa Fe Minerals, Inc.*, 145 IBLA 317, 325 (1998) (citing, *inter alia*, *United States v. California*, 332 U.S. 19, 40 (1947); *Marathon Oil Co.*, 119 IBLA 345, 352-53 (1991)).

⁴¹ SOR at 11 (emphasis added).

⁴² *See EP Energy E&P Co., L.P.*, 188 IBLA at 157, 167; *cf. Tengasco, Inc.*, 184 IBLA 367, 377, 384 (2014) (citing, *inter alia*, *Rocky Mountain Helium, LLC*, 148 IBLA 317, 319 (1999)).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,⁴³ we affirm BSEE's order.

_____/s/
Christina S. Kalavritinos
Administrative Judge

I concur:

_____/s/
Amy B. Sosin
Administrative Judge

⁴³ 43 C.F.R. § 4.1.